

### Kosovo's fifth anniversary - on the road to nowhere?

Meurs, Wim van; Weiss, Stefani

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## Kosovo's Fifth Anniversary – On the Road to Nowhere?

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**Dr. Wim van Meurs**

Center for Applied Policy Research (CAP)

Tel. ++49-89-2180.1339

[meurs@lrz.uni-muenchen.de](mailto:meurs@lrz.uni-muenchen.de)

[www.cap.uni-muenchen.de/bertelsmann/soe.htm](http://www.cap.uni-muenchen.de/bertelsmann/soe.htm)

**Stefani Weiss**

Bertelsmann Foundation

Tel. ++49-5241-8181-317

[Stefani.Weiss@Bertelsmann.de](mailto:Stefani.Weiss@Bertelsmann.de)

[www.bertelsmann-stiftung.de](http://www.bertelsmann-stiftung.de)

### KOSOVO'S FIFTH ANNIVERSARY

#### Executive Summary

**Five years:** 24 March 2004 marks the fifth anniversary of NATO operation Allied Force. As recent bouts of violence have tragically demonstrated, stability is still fragile, ethnic hatred unabated and rapprochement or reconciliation between local Albanians and Serbs as illusive as five years ago.

**The status question:** As the “standards before status” approach has confirmed, conditionalities, incentives and international pressure will only go so far in turning a weak state-like entity in a functioning state. Functional statehood hardly figures in the Belgrade and Prishtina visions of the future of Kosovo. All indications are that resolving the status issue either way – autonomy under Serbian sovereignty or full independence – would not provide real answers to the many fundamental challenges Kosovo faces, e.g. economic restructuring, societal reconciliation and European integration. The fundamental flaw of

“standards before status” is that it can unfold its incentive function for one party only and only if it prejudices the final status outcome. The opening of a negotiation process more readily invokes the forces of the past than peaceable visionaries.

**Time:** Since 1999, the *de facto* moratorium on the status issue has contributed substantially to stabilisation and normalisation in the region, but the productive phase of temporising is coming to an end. If the logic of the State Union of Serbia and Montenegro was at least partly linked to Kosovo, the likely dissolution of the State Union by early 2006 sets a firm time limit for the status of Kosovo. Political expediency and timetables are strongly against a further postponement of final-status negotiations, even though the non-status dialogue will not have shifted either partisan position on the status issue one inch.

**Negotiations:** In order to earth the extremely emotional and zero-sum debates in political reality, it would be advisable to challenge both parties to produce a concrete platform for future status - much along the lines of the initial negotiations between Belgrade and Podgorica. The political leaders in Belgrade actually have no master plan for a sustainable and domestically acceptable solution for Kosovo. Nor do their interlocutors from Prishtina have a concept for the Serb minority in the envisaged independent Kosovo. The endogenous capabilities in Belgrade and Prishtina to initiate a constructive process aimed at a mutually acceptable compromise arrangement for the final status of Kosovo are strictly limited.

**International community:** Assuming that the status process were to result in acceptance of either conditional independence or autonomy within Serbia by the negotiating parties, then it would be up to the international community to apply the fundamental principles of functional statehood, finality of state disintegration and fair arrangements for minorities. Most likely, at the end of the day, however, the UN and the Contact Group will have to define a final status single-handedly.

**Triple deadlock:** Ideally, the issues of Belgrade's sovereignty over Kosovo and Prishtina's sovereign statehood should be separated. Currently, a triple

deadlock exists. The international deadlock concerns the threat of a veto in the UNSC against national determination leading to secession and independence. The bilateral deadlock is Prishtina's and Belgrade's incapability and unwillingness to compromise on the status issue with no perspective whatsoever for the international community to sway leaders on either side. The local deadlock concerns the standoff between Albanians and Serbs in Kosovo.

**Final status:** As the bilateral deadlock cannot be broken, the international deadlock is the key. The fake option or lever of a restoration of Belgrade's sovereignty over Kosovo should be scrapped. The Contact Group ought to prepare the ground for new UN resolution annulling Res. 1244 and thereby ending Belgrade's sovereignty over Kosovo and transferring full sovereignty – not to Prishtina, but to the UN in New York. A UN trusteeship would eliminate the bilateral deadlock in status negotiations and create much better prospects for non-status negotiations. Similarly, once the Kosovo Serbs are in a situation similar to other Serb minorities (without parallel institutions or overriding loyalty to Belgrade), they will have to engage with Prishtina and might negotiate some form of autonomy within Kosovo. Thus, such a UN trusteeship in Europe would be a demanding strategy for the international community and the UN in particular, but it might produce a functioning state; it would be final by not creating a precedent for further state disintegration; and it would allow for fair arrangements with the Serb minority without upturning functionality or finality.

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## Kosovo Today

Five years have passed since NATO launched its first ever military operation in Europe to “prevent atrocities and genocide” in Kosovo. The Bosnian debacle had certainly fostered the international community's resolve for robust military and diplomatic intervention. Dayton also provided UNMIK and KFOR with lessons learned for the challenges of modern post-conflict

management, reaching far beyond mere peace keeping. In the case of Kosovo, the unresolved status issue exacerbated the challenges of outside state and nation building. Kosovo being the lynchpin of regional stability, in the aftermath of the war, a quick decision on independent statehood was considered a dangerous precedent for the “powder keg” of Europe.

Under international law, Kosovo has remained part of the Federal Republic of Yugoslavia, now Serbia-and-Montenegro, although its inner-Yugoslav status as autonomous province of Serbia is disputed. UNMIK and Kosovo's Provisional Institutions of Self-Government (PISG) jointly exercise all sovereign prerogatives in Kosovo. The international community has provisionally taken over from the Belgrade authorities in ruling and administering Kosovo. Most Albanian refugees returned right after Milosevic's capitulation in June 1999. Serbs who had fled after the war have only trickled back in small numbers despite substantial international programs for returnees. Today, Serbs constitute a locally concentrated minority of about 7% in Kosovo, the Albanians an 88% majority.

*Socio-economic development* in the structurally weak region of Kosovo has fallen far short of local and international expectations. In terms of housing and infrastructure the repair of war damages has been completed meanwhile, revealing underlying structures and macro-economic trends that offer little ground for optimism: a continuous slowdown in economic growth; a corresponding increase in unemployment; and a huge disproportion between import and export. What remains is a region with no major assets for sustainable economic development, but crippling historical legacies and structural deficits. The reform process of belated transition is seriously hampered by the local ethnic standoff between Albanians and Serbs as well as by the political standoff between UNMIK, the Belgrade authorities and the Kosovar leadership.

*Human security* improved significantly for the ethnic and religious minorities in Kosovo as soon as KFOR moved in to restore order after all state institutions had broken down at the height of the conflict. Interethnic violence became incidental, but revived long-established traditions of Serb-Albanian enmity and the frequency of brutal incidents have effectively disallowed a return to “normalcy.” The decent outbursts of violence have demonstrated how dangerously thin the cover of coexistence and how explosive the underlying hatreds are. The Serbs continue to live in scattered, isolated enclaves - some under permanent KFOR protection, but lacking the minimal preconditions for normal life. Consequently, the results of the increased international efforts to restore a “multiethnic Kosovo” by facilitating the return of Serb refugees and internally displaced persons (IDP) have been meagre, despite the abominable circumstances in refugee camps in Serbia proper. The number of potential returnees (230-240,000) canvassed by Belgrade is certainly way off the mark, but the number of actual returns (9,000 by

early 2004) is too low to be of any significance for the process.

The domestic *political process* in Kosovo has been institutionalised in the Provisional Institutions of Self-Government. “State building” (i.e. institution building) intentionally preceded democratisation. Heeding a key lesson from Bosnia, the international community opted for a bottom-up approach of democratisation, moving from local (28 Oct. 2000) to central elections (19 Nov. 2001). The Constitutional Framework for Provisional Self-Government (see p. 16), signed by the Special Representative of the Secretary General of the United Nations (SRSG) Hans Haekkerup on 14 May 2001, prepared the ground for “establishing and overseeing the development of provisional, democratic self-government institutions”, as stipulated by Res. 1244 (see p. 13). Rather than to prove the Kosovars’ ability and willingness to rule themselves, the political bickering after the November 2001 elections produced a stalemate that only the new SRSG Steiner could resolve in March 2002. The net outcome was Ibrahim Rugova holding the Presidency and a coalition government of the main Albanian parties under Prime Minister Bajram Rexhepi. The electoral law granted the Serb minority and its Povratak coalition a substantial “overrepresentation” in the Assembly (22 out of 120 seats). Yet, the elected assembly has in general refused to take into account legitimate minority concerns in the legislative process and has occasionally over-stepped its competencies. The “reserved powers” of UNMIK are those that really constitute a state under international law: budget, monetary policy, minority protection, external relations, security and the respecting of Res. 1244. On 7 March 2003, the Transfer Council of UNMIK and PISG was installed to manage the gradual transfer of competencies and responsibilities. Legally, the transfer to the PISG does not prejudice the final status as it could lead up both to substantial autonomy in a post-Yugoslav state and to independent statehood.

It has often been stated that much, if not everything in Kosovo depends on the status question. As a return to the *status quo ante* in terms of sovereignty was considered unrealistic and as the international community rejected a territorial partition along ethnic lines, the ensuing stalemate of non-status was redefined as “gaining time.” Due to timetables in Kosovo and Serbia-and-Montenegro, the status issue cannot be postponed much longer. The quasi-moratorium on the status issue has contributed substantially to stabilisation and normalisation in the region, but the productive phase of temporising is coming to an end. Conditionalities, incentives and international pressure will only go so far in turning a weak state-like entity in a functioning state. The achievements of a virtuous circle of “standards before status” may easily be jeopardised by a subsequent vicious circle of politicking for final status – timing is of the essence.

A regional framework of democratic states and basic stability has emerged, whereas the status issue sticks out more and more prominently as a factor hampering

economic and political progress as well as Euro-Atlantic integration for Kosovo and the Western Balkans. The domestic, regional and international context today may be far from ideal for a final solution to the Kosovo question, but it is equally hard to project short or medium-term changes that would make the circumstances really conducive for a negotiated arrangement.

The past half-decade has underscored that the time horizons of international politics and the eager anticipation of the local communities tend to be incompatible with elongated processes of nation and state building. It remains to be seen, however, whether shortcuts in these processes – if available – provide *real* answers to the many fundamental challenges Kosovo faces, e.g. economic restructuring, societal reconciliation and European integration.

### Roadmaps and Roadblocks

The status of Kosovo under international law is defined by UNSC Res. 1244 (and can thus be changed by another SC resolution only). Reaffirming the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY), the resolution authorises an international (military and civilian) interim administration to provide for Kosovo’s “substantial autonomy within the FRY.” Thus, both Yugoslav sovereignty and international transitional administration depend in duration on Res. 1244. Although the 1991-1992 Badinter Commission did not consider the option of independence for Kosovo, its criteria might be interpreted to include Kosovo, but not Republika Srpska and certainly not Northern Kosovo. Under the 1974 Yugoslav constitution, Kosovo was given the right to establish its own constitution, legislative power, and financial autonomy. The bodies of executive, legislative, and judicial powers (including constitutional courts) had the same status as those in the republics. Moreover, as far as the political and legislative process on the level of the federation was concerned, Kosovo was equal to the six republics and directly represented in the federal parliament, constitutional court, and presidency. Independence for Kosovo would *upgrade* the province’s borders to state borders, not *change* borders (as it would in the case of secession by the Republika Srpska, the Mitrovica or Tetovo regions). Typically, however, Res. 1244 does not refer to past Serbian models of autonomy for Kosovo, be it before and under the 1974 Constitution or after Milosevic’s revoking of Kosovo’s autonomy in 1989.

In the current situation, it is, however, for the international community a thin line between respecting *de jure* Yugoslav sovereignty over Kosovo and *de facto* administering the protectorate, with both Prishtina and Belgrade keeping a jealous and vigilant watch. Recently, for instance, the former Prishtina court now acting out of Nis indicted the commander of the Kosovo Protection Corps citing a Serbian Interpol warrant. UNMIK rejected the arrest of the KPC commander with the argument that the Nis court acted as a Serb parallel institution for Kosovo and had no



jurisdiction. On at least three occasions Belgrade's "virtual sovereignty" over Kosovo has ignited major political controversies, with more to come.

Firstly, the fact that Res. 1244 referred to Kosovo as *part of the FRY*, but not as the autonomous province of Serbia it actually was, has added to the confusion. Some have argued that the fact that the FRY ceased to exist with the creation of Serbia-and-Montenegro has made Res. 1244 irrelevant and thus Kosovo independent by default. Another line of argument – even for those who refute that Kosovo is part of Yugoslavia – claims that Res. 1244 precludes a return to a *status quo ante* as constituent part of the Republic of Serbia. The Belgrade Agreement for the Restructuring of Relations between Serbia and Montenegro (14 March 2002) included an explicit precaution for a possible disintegration after three years: "If Montenegro withdraws from the state union, international documents related to the FRY, the U.N. Security Council Resolution 1244 in particular, shall relate to and fully apply on Serbia as its successor." The suggestion that this provision violates the UNSC resolution by *re-introducing* Serb sovereignty over Kosovo seems far-fetched: The UNSC, respecting Yugoslav sovereignty, could not deny Kosovo being an autonomous part of Serbia under (any) Yugoslav constitution and theoretically Serbia might uphold the defunct "shell" of the state union even after Montenegro's secession, if only because of Kosovo.

Secondly, for Kosovar leaders it is a must to protest any appearance of Serbian, Yugoslav or Serbia-and-Montenegro's *sovereignty over Kosovo*. The bilateral treaty on the rectification of the state border between FYROM and Yugoslavia was signed in February 2001. The clarification of the border delineation served the improvement of border patrolling on both sides (and thus may have contributed to the outbreak of violence in Macedonia by cracking down on grey zones). The Albanian leaders in Prishtina found it hard to stomach that the Belgrade authorities could rectify the border and thereby "give away" some 2,500 hectares of "their" territory. Formal respect of Yugoslav sovereignty and pragmatic reasons of border security made the UN and NATO accept the agreement.

Thirdly, similar protests were provoked by the explicit *reference to Kosovo* as a province of Serbia in the preamble of the Constitutional Charter of the State Union of Serbia and Montenegro (6 Feb. 2003): "the state of Serbia which includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija, the latter currently under international administration in accordance with UNSC Resolution 1244." The upcoming new Serbian Constitution is bound to trigger a similar bout of protest. Neither party to the conflict will allow the tension to subside or the political hype of status to wither away. Second-track simulations and non-status negotiations certainly have their merits, but they will not scratch the surface of the status issue, even without the existing time constraints

In hindsight, it is often argued that a window of opportunity for an "imposed" final status arrangement (i.e. independence) actually existed when Milosevic was still in power. Whether the Serbs would have accepted the loss of Kosovo as punishment for the regime's crimes or whether Milosevic could have blamed it on the "unpatriotic" opposition remains a matter of speculation. Irrespective of self-serving Russian and Chinese opposition to Kosovo independence in the UNSC, the idea of Kosovo's reintegration in a post-Yugoslav state gained some credence with the end of the Milosevic regime and the coming to power of the democratic and reform-oriented DOS coalition in Belgrade. Additionally, it was argued that international pressure on the new democratic regime to settle the Kosovo issue might backfire and erode its popular backing in Serbia. For any Kosovar Albanian leader yielding one inch from the claim to full independence would be political suicide, as the status issue is not subjected to a costs-and-benefits analysis. Although many reform politicians in the Democratic Party and G-17 are more than willing to give up on Kosovo in order to boost economic reforms and European integration, they will say so only behind closed doors. The landslide victory of nationalist parties (ranging from Kostunica's DSS to Seselj's SRS) only adds to this political taboo.

#### The Future Status of Kosovo

|   |   |
|---|---|
| 1. <i>Independent statehood</i>   | <ul style="list-style-type: none"> <li>• conditional</li> <li>• unconditional</li> </ul>    |
| 2. <i>Autonomy within</i>   | <ul style="list-style-type: none"> <li>• Serbia</li> <li>• Serbia-and-Montenegro</li> </ul> |
| 3. <i>Reintegration</i> as third constituent part of the State Union of Serbia-and-Montenegro |   |
| 4. Permanent international <i>protectorate</i>  |   |
| 5. <i>EU integration</i>  |   |

Hypothetically, at least five main options for a future status of Kosovo are currently under discussion. At the end of the day, however, all options fall into three distinct categories; those that grant Belgrade any sovereign rights over Kosovo (autonomy, reintegration), those that do not (independence) and those that leave this question unanswered (permanent protectorate, EU integration). As national sovereignty is indivisible from an Albanian-Kosovar perspective and as Belgrade is ready to consider any option *but* independence, room for compromise seem to be non-existent. The underlying logic of each option and the overall objectives of the international community are therefore key in deciding on the way forward. The international community's principles may be summarised as:

1. *Functional*: the prioritisation of a functioning state over a nation-state
2. *Final*: a finality of Balkan state disintegration
3. *Fair*: a fair arrangement respecting the rights of minorities *without*, however, thwarting the first two principles

The *Kosovar* position of independent statehood claims that international conditionalities concerning human and minority rights as well as a fully functional state will be fulfilled once Kosovar self-determination has run its course. The logic of the Kosovar position is that it would be unjust to have a Serbian or South-Slavic state/federation rule over Albanian Kosovo. The arguments range from ethno-demographic (national self-determination) to legal (Kosovo's status under the SFRY constitution or the disintegration of the federation) to moral (Belgrade forfeiting its sovereign rights because of the atrocities committed by the Milosevic regime). Theoretically, independent statehood would not preclude a state restructuring within Kosovo through federalisation or cantonisation.

The *Serbian* position of a restoration of sovereignty over Kosovo could theoretically involve a range of options. Irrespective of the fact that a restoration is unlikely and that Belgrade has not even begun to contemplate the practical consequences, Belgrade's sovereignty could be implemented as an autonomous province of Kosovo either within the Republic of Serbia or within the State Union of Serbia-and-Montenegro. The exercise of constructing an autonomous status for Kosovo under the State Union and the Constitutional Charter is quite academic as any effort in that direction would reach beyond the projected life span of the State Union and even if, the dissolution of the State Union would set Kosovo free with an undefined status under international law. The same basic argument of time constraints applies to the concept of a tripartite State Union. Harmonising *three* instead of two economic and legal systems into a State Union compatible with the EU Stabilisation and Association Process would be a mission impossible even without time pressure. Zoran Djindjic's suggestion of a status for Kosovo in-between autonomy and third constituent of the state union was equally fuzzy. Thus, disregarding the current Kosovar position and assuming the velvet dissolution of the State Union by 2006, within the Serbian position autonomy within Serbia is the only "real" option.

#### Serbia with Kosovo

|                | Population (x1000)*    |        |
|----------------|------------------------|--------|
| Rep. of Serbia | 9,397                  |        |
| Vojvodina      | 2,031                  | 21.6%  |
| Kosovo         | 1,900                  | 20.2%  |
| Serbia proper  | 5,466                  | 58.2%  |
|                |                        |        |
|                | Territory (sq km)      |        |
| Rep. of Serbia | 88,361                 | 100,0% |
| Vojvodina      | 21,506                 | 24.3%  |
| Kosovo         | 10,887                 | 12.3%  |
| Serbia proper  | 55,968                 | 63.3%  |
|                |                        |        |
|                | Nationalities (x1000)* |        |
| Serbs          | 6,495                  | 69.1%  |
| Albanians      | 1,734                  | 18.4%  |
| Hungarians     | 293                    | 3.1%   |
| Bosniaks       | 211                    | 2.2%   |
| Others         | 666                    | 7.1%   |
| Total          | 9,398                  | 100,0% |

\* Republic Statistical Office of Serbia (2002 census); Statistical Office of Kosovo (estimate)

A prospective independent Serbia including an autonomous Kosovo would face serious new constitutional and ethno-political challenges. The quality of Kosovo's autonomy would set a precedent for Vojvodina and with the increasing vigour of the autonomy movement in that region, only equal status to Kosovo would be acceptable. The fact that Kosovo's autonomy under the 1974 constitution was linked as much to the SFRY as to the Republic of Serbia precludes a return to a *status quo ante*, but any new autonomy arrangement within Serbia for Kosovo, Vojvodina (and Sandzak?) would leave Belgrade with minimal, largely nominal sovereignty over these regions. The burden of transfers to Kosovo for economic development and security would easily top Tito's system of compensations. With one-third of the territory under autonomous rule and almost one-third of non-Serb population overall, the ethno-demographic composition and constitutional set-up of the "new" state so desired by Serbian nationalists would destroy any illusions of a homogeneous, centralised nation-state. More likely, in controlling and administrating Kosovo, Belgrade would have a state of war on its hands.

The key distinction between the current process of "standards before status" and the often-propagated alternative solution of "conditional independence" is the *ex ante* determination of independence as the final status. The process leading from the *definition* of final status to the actual *awarding* of independence would then be the same; an (incremental) transfer of sovereign competencies under substantial international supervision and guarantees. In terms of sequencing transfer and standards, "conditional independence" is frontloaded compared to the backloaded "standards before status." Logically, independence once awarded cannot be revoked and sovereign rights once transferred cannot be withdrawn. Thus, "conditional independence" in its practical implementation would be similar to the current situation in Bosnia with an OHR to uphold international standards and to move local politicking away from zero-sum games step-by-step.

The two "international" options of a permanent protectorate and European integration deserve closer scrutiny. The *protectorate* is hardly a long-term option in and by itself. On the one hand, both "standards before status" and "conditional independence" or even autonomy under Serbian sovereignty would imply an extended international (civilian and/or military) presence as guarantor in Kosovo. The well-known "unintended consequences" of protectorate arrangements such as the so-called "inflexibility trap" resulting in "frustrated societies, weak states and a crisis of democracy" are a stark argument against an unlimited continuation of this mode of governance.

The 1999 promise of a "European perspective" for the Western Balkans evidently includes Kosovo.

Nevertheless, the idea of a European short cut for Kosovo is largely utopian. Some have argued that the transfer of sovereign rights in the process of *EU integration* might make the sorting-out of sovereignty over Kosovo between Belgrade and Prishtina a superfluous exercise or at least one that could be cut-short by integrating Kosovo into the EU as it is. This shortcut has three drawbacks. Firstly, taking Kosovo's inability to meet basic criteria as an excuse to reduce or forfeit conditionalities would undo the fundamental logic of EU integration strategies. Secondly, apart from the fact that sovereignty is generally seen as indivisible in the Balkans, the sovereign rights relegated to Brussels in the process of European integration are not those disputed between Prishtina and Belgrade. Thirdly, the EU can only negotiate a Stabilisation and Association Agreement (SAA) with a fully sovereign and functional state. In order to circumvent this dilemma and not to complicate the SAA preparations with the State Union of Serbia and Montenegro further, the EU has set up a Stabilisation and Association Process Tracking Mechanism (STM) for Kosovo. This joint technical working group of UNMIK, the PISG and the European Commission simulates the benefits of SAA preparations for the countries of the region in terms of norm-setting and policy guidance for EU-compatible structural reforms. The outcome for Kosovo, however, cannot be the signing of an SAA. The government in Belgrade cannot be held responsible for the fulfilment of SAA criteria in Kosovo, nor can - to a large extent - the government in Prishtina. Judging by the track record of the other Balkan countries in the Stabilisation and Association Process so far, even an independent but weak Kosovar state would be an unlikely candidate for a fast track to EU membership. Conversely, the signing of an SAA with Serbia-and-Montenegro or, more likely, Serbia *and* Montenegro in the medium term - a feasibility report for Serbia and Montenegro is being prepared, but a ratified SAA before 2007 is unlikely - would have consequences for Kosovo too. Far-reaching autonomy within Serbia would create SAA problems similar to Bosnia's and conditional independence would imply a separate SAA for Kosovo. Reform politicians in Belgrade therefore argue that progress on EU integration as well as on political and economic reforms would be much quicker without Kosovo (and without Montenegro).

Options involving an exchange of population or territory would fly in the face of the most basic European principles and would certainly trigger an avalanche of similar claims in the region and beyond. These options may be (and are) used as threatening gestures, but are non-starters in an orderly final-status process. The same applies to possible "solutions" involving a partitioning of Kosovo along the (main) ethnic lines, with the Serb part joining Serbia and the Albanian part gaining independent statehood or revisiting visions of a Greater Albania. Accepting such a redrawing of borders would foster and legitimise similar ideas in Bosnia, Preshevo Valley and Macedonia - a slippery slope towards ethnic cleansing.

More importantly, such a decision would condone the concept of Kosovo as a second, mono-ethnic nation-state of the Albanians where minorities can at best be tolerated. Euphoric international promises to "restore" multicultural and multiethnic communities has subsided and the international community has come to accept pragmatic solutions in refugee return and related property issues. Yet, countering creeping endeavours to turn states and state-like entities into mono-ethnic constituencies by violent or other means remains a prime objective.

*Restructuring* of Kosovo could be an option to accommodate ethnic minorities (i.e. the Serb population), both in a framework of conditional independence and as an autonomous province of Serbia. *Federalisation* would create two ethnically defined constituent entities within an independent Kosovo (similar to the Federation and the Republika Srpska within Bosnia-Herzegovina). A federalisation of Kosovo as a province of Serbia would be food for thought for experts in international and constitutional law. Due to the haphazard distribution of pockets of Serb population over Kosovo the territorial shape of the two entities would surpass the worst versions of the Vance-Owen plan for Bosnia. As the lessons of Dayton indicate, in either case the net result would be a political system deadlocked by ethnic loyalties, a plethora of practical problems and a multiplication of public institutions without corresponding increase in the functioning and output legitimacy of the "state."

*Cantonisation* originally refers to the classic and unique Swiss example of plural constituent parts of the state that are not ethnically defined. Since Dayton, cantonisation refers to a state arrangement consisting of multiple ethnically defined territorial units. The distribution of the Serb population in Kosovo would seem to favour such a way-out over federalisation. The price to pay would be the same: an uncontrolled multiplication of institutions and politics to the detriment of socio-economic realities - again a lesson learned from Bosnia.

Typically, the workability of sub-state arrangements to accommodate minority communities requires a strong and prosperous state as well as a historical tradition. Otherwise, the outcome tends to be a weak, dysfunctional and de-legitimised state. The argumentative fallacy of both cantonisation and federalisation concerns the principle of *reciprocity*. The Albanian Kosovars argue that, because of their right to national self-determination or wartime atrocities, they cannot be part of or be ruled by a Serb-dominated state. Reciprocally (albeit on a smaller scale), Serbs in Kosovo argue that, because of *their* right to national self-determination or post-war atrocities, they cannot be part of or be ruled by an Albanian-dominated state. Consequently, all state politics is ethnic politics. Cooperation between Serbs and Albanians is relegated either to the individual level or to the inter-state and the European level. In an independent Kosovo it would be hard to argue why the Serbs in Mitrovica should not have a claim to

maximum autonomy. In a re-integrated Serbia it would be equally hard to argue why the province of Kosovo should be partitioned ethnically with federal autonomy for the Serbs, whereas statehood should be refused to the Kosovo Albanians.

Assuming that the status process were to result in acceptance of either conditional independence or autonomy within Serbia by the negotiating parties, then it would be up to the international community to apply the fundamental principles (functional, final and fair). *Functionality* of Kosovo as a state or autonomous entity would be highly problematic in any constellation, if only because of obstructionism by the Albanian Kosovars in the first or the Serb minority of Kosovo in the second case. Territorial solutions would create too many non-cooperative and rivaling levels of government, e.g. a Serb autonomous province within a Kosovo autonomous entity within the state of Serbia (itself a constituent republic of a State Union). The criterion of *finality* does not refer to the sustainability of such an arrangement, but rather to potential precedents for the region. A federalisation or cantonisation of Kosovo would be a precedent for Albanians in Macedonia. Independence would be a wake-up call for Serbs in Bosnia. Eventually, “precedent” is not a legal category, but rather the readiness of one or more parties to instrumentalise a specific case for their own ends. As a consequence, precedents can always be construed – the issue is rather how credible they are as a factor of public mobilisation and indignation. Conversely, the international community has to be able to make the case for the consistency and righteousness of its approach to various cases of nation and state building in the region. Lastly, although no binding legal norms and uniform practices exist for minority regimes in Europe, the criteria of state functionality and a finality to state fragmentation imply a certain correlation between distribution, relative and absolute size of a minority, on the one hand, and the extent of minority arrangements, on the other hand.

Functional statehood hardly figures in the Belgrade and Prishtina visions of the future of Kosovo. It is either considered to be of secondary importance or an automatic consequence of restored statehood and national statehood respectively. Whereas a reintegration of Kosovo in whatever form would certainly unhinge the fragile political structures in Belgrade, Kosovars are inclined to show off their parallel underground institutions of the 1990s as a basis of statehood. In order to earth the extremely emotional and zero-sum debates in political reality, it would be advisable to challenge both parties to produce a concrete platform for future status - much along the lines of the initial negotiations between Belgrade and Podgorica. Platforms specifying constitutional arrangement for Kosovo autonomy in Serbia or minority protection regimes for Serbs in Kosovo respectively might have a sobering effect.

All in all, the various options championed by Albanian and Serbian politicians are fatally reminiscent of the

famous one-liner, “Why should I be a minority in *your* country, if you could be a minority in *mine*?”

## Nation and State Building Revisited

As the endogenous capabilities in Belgrade and Prishtina to initiate a constructive process aimed at a mutually acceptable compromise arrangement for the final status of Kosovo are strictly limited, much if not everything depends on the “international community.” Although Russia also factors in as a potential veto power in a UNSC authorisation of a final status for Kosovo, constructive engagement mainly concerns the USA and the EU (or key EU members).

With the international community equally deadlocked and largely unwilling to tackle the thorny Kosovo issue head-on, a breakthrough will likely depend on shifts in EU and/or US interests outside the Balkan conundrum. The recent shaping-up of the EU’s Common Foreign and Security Policy and its enhanced willingness and the enhanced ability to handle military and policing operations has consequences for the Balkans and the transatlantic division of labour, but hardly impinges on the deadlocked status issue.

Conversely, September 11<sup>th</sup> and the War on Terror have put into question several mainstays of international politics with several potential implications for the Western Balkans and Kosovo. In the immediate aftermath of the terrorist attacks, the logic consequence seemed to be an acceleration of the existing trend towards US political and military disengagement from a European region of marginal strategic relevance. Consequently, by the end of 2002 the Kosovo Albanians who had banked on their “American allies” rather than the Europeans to support their drive for independence, felt that time was running out. The War on Terror, however, soon brought the Balkan back into the spotlight as a region of state weakness or failure and thus a potential safe haven for terrorism and organised crime. Many an ethnic conflict in the region was redefined overnight as part of the worldwide “fight against terrorism” (including Milosevic’s campaign against the KLA in 1998/99). The War on Terror, however, seemed to point to a preference for strong states ready to subordinate to US security concerns. It seems doubtful that this shift in international priorities would have improved the odds for independent statehood for Kosovo.

Negative consequences for the international handling of the status issue seemed more obvious. Apart from the reorientation of US and European attention, possibly to the detriment of the Balkans in terms of human and financial resources, the aftermath of September 11<sup>th</sup> also constituted a challenge for post-conflict stabilisation strategies in general. During the war in Afghanistan, the USA and its European allies agreed on a combination of military might and humanitarian aid. In the post-war phase, the diverging American and European philosophies of stabilisation and modernisation as well as the balancing of hard and soft power projection were bound to reappear. The USA’s preference for predefined exit strategies and a



quick transfer of power, on the one hand, and aversion against peace keeping and comprehensive post-conflict strategies, on the other hand, contrasted with the international handling of the Western Balkans since Dayton. The handling of Afghanistan by the Bush administration was reminiscent of Balkan exit strategies and a division of labour between US warfare and European post-war reconstruction. The trend towards short-lived strategic alliances and exit-strategies did not bode well for a comprehensive and concerted Balkan strategy. European policies for the Balkans – based on a regional approach of intensive dialogue and perspectives of stabilisation and integration – might have been affected by proxy.

Moreover, the transatlantic rift in connection with the 2003 Iraq War may have nurtured Balkanic hopes that there would be ample opportunities to play the American and European powers off against each other in the Kosovo issue. Although these hopes were not totally unfounded, recent developments in post-Taliban Afghanistan and post-Saddam Iraq seem to give international and especially American interest in the Balkans and Kosovo yet another twist.

For many US policy makers and think tanks “peace keeping” was a dirty word synonymous with losing sight of the US “national interest” in quagmires of regional conflicts without strategic relevance. Meanwhile, they have come around to shoulder the far more ambitious task of “nation building” in Afghanistan and Iraq – albeit typically understood in a reductionist manner subsuming “state building” and “society building” as corollaries of “nation building,” i.e. democratisation. The daunting task of democratising Afghanistan, Iraq and possible other former failed or rogue states urgently (in view of the upcoming presidential elections) calls for proof that it can be done, proof that military exit strategies and successful outside nation building are possible within an acceptable timeframe. Despite persistent signs of reluctance and dissension, at least the international community – unlike the parties to the conflict – seems to develop some drive and motivation to tackle and conclude the Kosovo status issue.

## Negotiating Kosovo

The UNSC Resolution 1244 assigns UNMIK and the SRSG the task of “facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet Accords.” The ambiguity of the accords’ text, however, is unsurpassed: “Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act.” This one sentence raises a plethora of questions: What if the will of the people and the opinions of the relevant authorities turn out to be irreconcilable? Is the reference to the Helsinki Final Act a reminder that state borders are inviolable or does it make any solution conditional on a larger set of

standards concerning human and minority rights, democracy and the rule of law?

Even though Res. 1244 highlighted Yugoslav sovereignty over Kosovo and failed to mention the timeframe, Michael Steiner’s “standards before status” speech at the UN in April 2002 marked the end of this three-year time-out. His proposal was generally considered the best possible option given the circumstances, defining eight standards or benchmarks:

1. functional state institutions;
2. enforcement of the rule of law;
3. freedom of movement;
4. right of return for all Kosovars;
5. market economic development;
6. clarity of property title;
7. normalised dialogue with Belgrade; and
8. reduction and transformation of the Kosovo Protection Corps (KPC).

Most of these benchmarks are related to state functionality and have to be addressed by the PISG. From a Kosovar perspective, making the opening of status negotiations conditional on them fulfilling certain standards is an incentive only if independence is the guaranteed or prejudiced outcome of the negotiations. Conversely, from a Serb perspective the “standards before status” formula provides no incentive for cooperation whatsoever and might even be understood as an invitation to obstruct and thwart progress on issues such as the Prishtina-Belgrade dialogue (7) or refugee return and freedom of movement (3-4). Thus, the fundamental flaw of “standards before status” is that it can unfold its incentive function for one party *only* and *only* if it prejudices the final status outcome.

“Standards before status” opened the prospect of a mediated bilateral dialogue on non-status issues and UNMIK finally took its courage in both hands and sought to cut through the legal complexities of ownership and sovereignty. In June 2002, the Kosovo Trust Agency was established to administer publicly-owned firms and begin the privatisation process on the basis of laws approved one month earlier. The fact that UNMIK no longer shuns status-related questions and since November 2003 even envisages a corresponding political process also reinvigorated political activity in Belgrade and Prishtina. Albanian politicians reiterated their position that Kosovo is independent and only awaits international recognition. They criticized that Steiner’s formula did not contain a roadmap and a timetable for independence. In Belgrade the Kosovo issue had been handled by Deputy Prime Minister Nebojsa Covic, who heads the government’s Coordination Centre for Kosovo (CCK). In January 2003, it was publicly announced that status negotiations should no longer be postponed, as further delays would only consolidate Kosovo’s *de facto* statehood, a trend unacceptable to Serbia. To underline his claim, Djindjic demanded the stationing of Serbian security forces in Kosovo and proposed the ethnic federalisation of Kosovo under Serbian sovereignty.

The ceremonial opening of “technical” negotiations between Prishtina and “Belgrade” in Vienna on 14 October 2003 constituted a belated satisfaction for Michael Steiner, who had left Kosovo in the summer of that year. His political mantra of “standards before status” had brought Kosovars and Serbs to the Austrian capital. At the EU-Western Balkans Summit in Thessaloniki in June 2003 the mutual readiness to open negotiations had been celebrated. Irrespective of the question, whether Kosovo becomes an independent state in the medium terms or not, numerous *practical* questions thus far remained unanswered between the two neighbours, ranging from transport and license plates to energy supplies and telecommunication. In the harsh political realities of today, however, each and every protocolary decision and technical issue appears as the status question in disguise. In the UN mediated negotiations, each party to the conflict watches his opponent with eagle eyes to prevent the other from prejudicing the final status of Kosovo in his favour, while striving to do just that himself. The number of mantraps awaiting the UN negotiators is plenty.

In the run-up to the negotiations, both parties – as was to be expected – brought up their big guns. In spring, the Kosovar Parliament threatened to declare independence and the Serb communities in northern Kosovo countered with the options of unification with Serbia or the creation of their own “Republika Srpska” within Kosovo. The Serbian Parliament and Government in Belgrade declared on 27 August that the only acceptable future status for Kosovo would be that of a province of Serbia, adding the return of Serb refugees and the Serbian army as conditions. In order not to negate the emotional next to the legal dimension, the Orthodox Church in Belgrade simultaneously epithetised Kosovo as “Serbia’s Jerusalem.” The parliament in Prishtina refused to debate the substance of the Vienna negotiations, to give the Rexhepi government a mandate and thereby assume responsibility for the upcoming bilateral talks.

The breakthrough of sorts concerned the readiness of the Kosovar leadership and “Belgrade” to accept each other as negotiating parties. For Belgrade negotiations with Prishtina undermined the alleged status of Kosovo as merely a province of Serbia, whereas it had symbolic importance for Prishtina whether representatives of Serbia or Serbia-and-Montenegro were sitting on the opposite side of the table. Thus, on 14 October 2003, the delegations met under the vigilant eye of the revived Contact Group, Lord George Robertson (NATO), Jaap de Hoop Scheffer (OSCE) and Javier Solana (EU). Zoran Zivkovic, Prime Minister of Serbia, and by Nebojsa Covic, his Deputy and President of the Coordination Centre for Kosovo and Metohia, represented Serbia-and-Montenegro. The last-minute withdrawal of Kosovar Prime Minister Bajram Rexhepi was a major setback. Only President Ibrahim Rugova and Nedžad Daci, Chairman of the Assembly, arrived in Vienna. After a short meeting with high media coverage it was formally decided to install four working groups that were to meet alternately in Prishtina and Belgrade,

starting in November, to deal with (1) electricity supply for Kosovo; (2) transport and telecommunications; (3) refugee return; and (4) missing persons. Meanwhile, the representatives of the Belgrade and Prishtina working groups have held their first meetings under international chairmanship. The first meeting of experts on 4 March 2004 in Prishtina (and due to reconvene in Belgrade on 1 April) deals with the least politicised issue - energy supply and environmental protection. The working groups for missing persons met on 9 March 2004 in Prishtina with the Kosovar delegation including both Milorad Todorovic as the responsible minister and UNMIK staff. The working groups on transport and telecommunications as well as the most controversial issue of the return of displaced persons are yet to hold their first meeting.

After the meeting, Rugova underlined that Kosovo’s mind was firmly set on joining the EU and NATO as an independent country. In return, Covic noted that the past meeting had brought together representatives of the Republic of Serbia and the province of Kosovo. The uneasy mediating role of UNMIK is not only due to the single-mindedness with which the rivals had dug their heels in even before the “negotiations on issues of joint interest” had actually started. Paradoxically, the opening of technical negotiations as such not only constitutes a victory for the “standards before status” approach, but also its demise: In order to avoid the absurd situation of Kosovars and Serbs fighting at the negotiation table about issues that actually belong to the prerogatives of the third quasi-neutral party of UNMIK, Steiner had to transfer some more competencies to the institutions of provisional self-government. This transfer collided with the “standards before status” logic, even though the opening of negotiations was one of the eight standards.

In order to further complicate the pre-negotiations for the Vienna meeting, additional “parties” demanded access. The Serb minority in Kosovo insisted on having its own representative at the table. Following the same ethnic (versus state) logic, the Albanian minority in the Preshevo Valley reciprocally insisted on having its own representative present. In the Kosovo delegation the Serb Milorad Todorovic officially did not represent the ethnic minority, but was invited *ex officio* as minister. With Rexhepi’s withdrawal, Harri Holkeri felt compelled to disinvite Todorovic as well.

The conclusion from the Vienna meeting is that the political leaders in Belgrade actually had no master plan for a sustainable and domestically acceptable solution for Kosovo. Nor had their interlocutors from Prishtina a concept for the Serb minority in the envisaged independent Kosovo. The fact that the international community seems equally helpless in dealing with the status question is more worrisome. A resounding victory for G17 and other reformers unwilling to let the status question block Serbia’s road to Europe in the December 2003 elections might have been helpful to unravel the Gordian knot. The victory

of the nationalist SRS has tied the hands of even the most liberal politicians in Belgrade. To top it all, voices linking a possible loss of Kosovo to the partition of Bosnia have already been heard from Banja Luka and Belgrade. Albanians from Preshevo Valley or the Tetovo region might be tempted to use violence to state their claim in the negotiation process or to stop the talks altogether. Recent unrest in Southern Serbia and Macedonia and violent clashes in Kosovo seem to indicate that the opening of a negotiation process more readily invokes the forces of the past than peaceable visionaries.

As political constraints dictate and as several international simulations have proven, neither Serbs nor Albanians have any motivation to cooperate and initiate compromises. No incentives (economic assistance or even EU integration) and arm-twisting is likely to reach beyond bringing them to the negotiation table. Both sides will drive the internationals up the wall by quarrelling over procedures and modalities and stonewalling any talks on substantive, status-related issues. Even if, in an unthinking moment, the two parties were to agree – their “solutions” involving partitionings and land-swaps would be blatantly unacceptable for the international community. By all appearances, with acknowledging the loss of Kosovo a political taboo in Belgrade, reformers tend to favour partitioning or federalisation and thus give up all but formal sovereignty over the rest of Kosovo. Conversely, nationalists talk of cantonisation, which implies an ambition to control all of Kosovo in one way or another. Overall, the Belgrade argument seem to have shifted from a historical claim to the protection of the Serb minority, pointing an accusing finger at the track record of the PISG, UNMIK and KFOR in minority protection and insisting on full implementation of Res. 1244.

### Timetable

|             |  |
|-------------|--|
| June 1999   | UNSC Res. 1244   |
| Oct. 2000   | Local elections in Kosovo  |
| Nov. 2001   | Central elections in Kosovo  |
| March 2002  | Belgrade Agreement between Serbia and Montenegro                                       |
| Feb. 2003   | Proclamation of the State Union of Serbia and Montenegro                               |
| Oct. 2003   | Opening of UN-mediated negotiations between Belgrade and Prishtina in Vienna           |
| Nov. 2003   | Announcement of mid-2005 as the timetable for status negotiations by the Contact Group |
| Dec. 2003   | Parliamentary elections in Serbia  |
| April 2003  | Presidential elections in Serbia   |
| Oct. 2004   | Parliamentary elections in Kosovo  |
| Spring 2005 | Parliamentary elections in Serbia-and-Montenegro                                       |
| Mid-2005    | Review of standards for Kosovo, opening of status negotiations                         |
| Feb. 2006   | End of the 3-year moratorium on the Montenegro referendum                              |
| ??          | UNSC Res. on the final status of Kosovo  |

In sum, with “standards before status” and the opening of a negotiation process the status issue is back on the agenda (assuming it ever was “off the agenda”) and here to stay. The classic post-conflict approach of holding off controversial issues while re-establishing normal relations has run its course. If the logic of the State Union of Serbia and Montenegro was at least partly linked to Kosovo, the end of the moratorium by early 2006 and the likely dissolution of the Union set a firm time limit for the status of Kosovo. In the meantime, the various entries in the regional timetable (e.g. the upcoming elections in Serbia, Kosovo and Serbia-and-Montenegro) will keep the status issue in the newspapers.

The benchmarks as specified by the current SRS (see p. 21) are a tall call if not a mission impossible for the Kosovar leaders with little more than a year to go. A public commitment and the implementation of corresponding policies for a multiethnic Kosovo by Albanians leaders in Prishtina feature high on the list of tasks. Some of the benchmarks are rather general, e.g. the promotion of civil society, but others are highly demanding, e.g. a legal framework for investment or conditions for safe returns. Predictably, the outcome of the review of mid-2005 will have to be positive despite serious shortcomings on most benchmarks, with the Kosovars pointing to their limited competencies and Serb obstructionism and the Serbs arguing that the UN assessment is biased in favour of Kosovo independence. Political expediency and timetables are strongly against a further postponement of final-status negotiations, even though the non-status dialogue will not have shifted either partisan position on the status issue one inch. It seems a safe bet that no intense and “robust mediation,” no international package of incentives and pressure will bring the two parties closer to a consensual outcome for the final status negotiations. In the end, the parties to the conflict can wait, the international community cannot. Most likely, at the end of the day, the UN and the Contact Group will have to define a final status single-handedly.

### Final Status

Finding middle ground between Prishtina and Belgrade positions might involve “independence without full sovereignty” or “full sovereignty without independence.” Precedents for such constellations are rare, but some have proven quite stable. *Taiwan* acts as an independent state, but is not a member of the UN and *de jure* remains a province of mainland China. Taiwan largely refrains from pushing the issue of recognised independent statehood, whereas Chinese threats to reassert its sovereignty by force have also subsided. After more than 30 years, *Northern Cyprus* continues to exist as a *de facto* state without international recognition. Fruitless negotiations kept the border between the two half of the island closed for decades, although violence subsided. Only the immediate prospect of EU membership seems to have opened a window of opportunity for a rapprochement and new status talks. The *Ostpolitik* of West Germany vis-à-vis the GDR is another example of accepting

overriding international realities and creating possibilities for mutually beneficial cooperation and pragmatic coexistence without prejudicing fundamentally incompatible positions on state sovereignty. The British *Commonwealth* stands for a minimum of symbolic integration without a real transfer of sovereignty. The more or less constructive and at least stabilising outcome in each of these cases depended primarily on the willingness of the protagonists to respect the opposing claim, to accept the impossibility to find a functioning compromise and to work with the ensuing constellation. Typically, in each case the protagonists were state (or state-like entities) without violent “pressure groups,” ethnic minorities or “age-old” ethnic hatreds.

As the Kosovo status issue definitely does not fulfil any of these preconditions, the international community has to prepare a scenario for the likely case of deadlocked status negotiations on the basis of its own principles – functional, final and fair. Postponing either the deadline for the beginning of status negotiations or the one for their conclusion is not an option with so many actors interested in blocking the negotiation process. As vested interests ranging from nationalist politicians to organised crime thrive on fuzzy arrangements and fuzzy timetables, the new status of Kosovo would have to be clear and enforceable. “Standards before status” has no incentive for Belgrade and as the issue of state functionality in Kosovo is unlikely ever to have an impact on the status debate in far-away Belgrade (but may one day in Prishtina and Mitrovica). The UN should fix an end date for status negotiations in advance and define an authoritative alternative: “no” to the Belgrade agenda and “no” to the Prishtina agenda.

Ideally, the issues of Belgrade’s sovereignty over Kosovo and Prishtina’s sovereign statehood should be separated. Currently, a triple deadlock exists. The international deadlock concerns the threat of a veto in the UNSC against national determination leading to secession and independence. The bilateral deadlock is Prishtina’s and Belgrade’s incapability and unwillingness to compromise on the status issue with no perspective whatsoever for the international community to sway leaders on either side. The local deadlock concerns the standoff between Albanians and Serbs in Kosovo. The Albanians insist on turning “standards before status” upside down. The Serbs are well aware of the international deadlock, which reduces their already non-existent readiness to negotiate the status issue even further. Local Serbs are equally aware of Belgrade’s unwavering support and pertinent position on the status issue, which reinforces their unwillingness to come to terms with Kosovo. As the bilateral deadlock cannot be broken, the international deadlock is the key.

The proposed alternative is the annulment of Res. 1244 and Belgrade’s sovereignty to be replaced by a full UN trusteeship rather than conditional independence. The fake option or lever of a restoration of Belgrade’s sovereignty over Kosovo should be scrapped. It

nurtures political illusionism in Belgrade and provides Kosovar politicians with an excuse to dodge the real issues. The Contact Group ought to prepare the ground for new UN resolution annulling Res. 1244 and thereby ending Belgrade’s sovereignty over Kosovo and transferring full sovereignty – not to Prishtina, but to the UN in New York. A UN trusteeship would eliminate the bilateral deadlock in status negotiations and create much better prospects for non-status negotiations. Similarly, once the Kosovo Serbs are in a situation similar to other Serb minorities (without parallel institutions or overriding loyalty to Belgrade), they will have to engage with Prishtina and might negotiate some form of autonomy within Kosovo. The “reserved powers” of UNMIK and the SRSG would largely remain the same – international representation, minority protection and security. The normal political process and the functioning of the state would be put in the hands of a representative government under the oversight of a High Representative much like in Bosnia.

Such a UN trusteeship in Europe would have the advantage of clarifying (or at least simplifying) the issue of sovereignty and leave the negotiations on “succession issues” with Belgrade to the UN. In Kosovo the trusteeship would create the basic preconditions for large-scale privatisation and economic development (but without the hollow promises of independence). The UN and its civilian and security institutions in Kosovo would have to provide and implement solid guarantees for the Serb minority and Belgrade would have every right to be particularly vigilant and demanding vis-à-vis the UN and UNMIK/KFOR in this respect. The Serb minority would have to engage with the PISG and abolish all parallel institutions. Belgrade’s influence on Kosovo would be channelled via the UN, not back-channelled via Mitrovica. The Albanian Kosovars would not gain independence, but they would lose the threat of “Yugoslav” restoration. The trusteeship would be a demanding strategy for the international community and the UN in particular, but it might produce a *functioning* state; it would be *final* by not creating a precedent for further state disintegration; and it would allow for *fair* arrangements with the Serb minority without upturning functionality or finality.

Wim van Meurs, CAP Munich  
March 2004



## Glossary

|       |   |
|-------|---|
| CCK   | Coordination Centre for Kosovo                  |
| DSS   | Democratic Party of Serbia                      |
| FRY   | Federal Republic of Yugoslavia                  |
| FYROM | Former Yugoslav Republic of Macedonia           |
| IDP   | Internally Displaced Persons                    |
| KFOR  | Kosovo Force                                    |
| KPC   | Kosovo Protection Corps                         |
| PSIG  | Provisional Institutions of Self-Government     |
| SAA   | Stabilisation and Association Agreement         |
| SAP   | Stabilisation and Association Process           |
| SFRY  | Socialist Federal Republic of Yugoslavia        |
| SRS   | Serbian Radical Party                           |
| SRSg  | Special Representative of the Secretary General |
| STM   | SAP Tracking Mechanism                          |
| UNMIK | UN Mission in Kosovo                            |
| UNSC  | UN Security Council                             |

## For Further Reading

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- *Optionen für die Zukunft des Kosovo*, SWP-Studie 21, 2001.

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[www.usip.org](http://www.usip.org)

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- *Simulating Kosovo: Lessons for Final Status Negotiations*, Special Report, Nov. 2002
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- Deutsche Welle: *Quo vadis Kosovo/a?* June 2003
- CSIS/DPAP: *Kosova - Achieving a Final Status Settlement*, January 2003
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## DOCUMENTS

### UN Security Council Resolution 1244

**Adopted by the Security Council at its 4011<sup>th</sup> meeting, on 10 June 1999**

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;

2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;

3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;

(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include:

(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);

(b) Performing basic civilian administrative functions where and as long as required;

(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;

(e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);

(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;

(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;

(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

#### **Annex 1**

Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersburg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

## **Annex 2**

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:

- Liaison with the international civil mission and the international security presence;
- Marking/clearing minefields;
- Maintaining a presence at Serb patrimonial sites;
- Maintaining a presence at key border crossings.

7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.

8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.<sup>1</sup> A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

### **Withdrawal**

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

### **Returning personnel**

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

### **Note 1: Other required elements:**

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;



- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

## **Constitutional Framework for Provisional Self-Government**

**UNMIK/REG/2001/9 - 15 May 2001**

### **Preamble**

The Special Representative of the Secretary-General (SRSG),

Pursuant to the authority given to him under United Nations Security Council Resolution 1244(1999) of 10 June 1999 (UNSCR 1244(1999));

Recalling that UNSCR 1244(1999) envisages the setting-up and development of meaningful self-government in Kosovo pending a final settlement;

Acknowledging Kosovo's historical, legal and constitutional development; and taking into consideration the legitimate aspirations of the people of Kosovo to live in freedom, in peace, and in friendly relations with other people in the region;

Emphasizing that, since its establishment, the United Nations Interim Administration Mission in Kosovo (UNMIK) has supported and assisted the people of Kosovo and has worked towards this aim by enabling them to take responsibility gradually for the administration of Kosovo through the establishment of the Joint Interim Administrative Structure (JIAS);

Considering that, building on the efforts undertaken by UNMIK and on the achievements of JIAS, including the valuable contribution by the people of Kosovo, and with a view to the further development of self-government in Kosovo, Provisional Institutions of Self-Government in the legislative, executive and judicial fields shall be established through the participation of the people of Kosovo in free and fair elections;

Determining that, within the limits defined by UNSCR 1244(1999), responsibilities will be transferred to Provisional Institutions of Self-Government which shall work constructively towards ensuring conditions for a peaceful and normal life for all inhabitants of Kosovo, with a view to facilitating the determination of Kosovo's future status through a process at an appropriate future stage which shall, in accordance with UNSCR 1244(1999), take full account of all relevant factors including the will of the people;

Considering that gradual transfer of responsibilities to Provisional Institutions of Self-Government will, through parliamentary democracy, enhance democratic governance and respect for the rule of law in Kosovo;

Endeavouring to promote economic prosperity in Kosovo and the welfare of its people through the development of a market economy;

Affirming that the exercise of the responsibilities of the Provisional Institutions of Self-Government in Kosovo

shall not in any way affect or diminish the ultimate authority of the SRSG for the implementation of UNSCR 1244(1999);

Taking into account the Charter of the United Nations; the Universal Declaration on Human Rights; the International Covenant on Civil and Political Rights and the Protocols thereto; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; the European Charter for Regional or Minority Languages; the Council of Europe's Framework Convention for the Protection of National Minorities; and other relevant principles reflected in internationally recognized legal instruments;

Recognizing the need to fully protect and uphold the rights of all Communities of Kosovo and their members;

Reaffirming the commitment to facilitating the safe return of refugees and displaced persons to their homes and their exercise of the right to recover their property and possessions, and the commitment to creating conditions for freedom of movement for all persons;

Recognizing the importance of creating a free, open and safe environment which facilitates the participation of all persons including all members of Communities in the process of establishing democratic institutions of self-government;

Hereby promulgates the following:

### **Chapter 1. Basic Provisions**

1.1 Kosovo is an entity under interim international administration which, with its people, has unique historical, legal, cultural and linguistic attributes.

1.2 Kosovo is an undivided territory throughout which the Provisional Institutions of Self-Government established by this Constitutional Framework for Provisional Self-Government (Constitutional Framework) shall exercise their responsibilities.

1.3 Kosovo is composed of municipalities, which are the basic territorial units of local self-government with responsibilities as set forth in UNMIK legislation in force on local self-government and municipalities in Kosovo.

1.4 Kosovo shall be governed democratically through legislative, executive, and judicial bodies and institutions in accordance with this Constitutional Framework and UNSCR 1244(1999).

1.5 The Provisional Institutions of Self-Government are:

- (a) Assembly;
- (b) President of Kosovo;
- (c) Government;
- (d) Courts; and
- (e) Other bodies and institutions set forth in this Constitutional Framework.

1.6 The seat of the Provisional Institutions of Self-Government is Pristina.

1.7 The Provisional Institutions of Self-Government shall use only such symbols as are or as may be set forth in UNMIK legislation.

## **Chapter 2. Principles to be Observed by the Provisional Institutions of Self-Government**

The Provisional Institutions of Self-Government and their officials shall:

(a) *Exercise their authorities consistent with the provisions of UNSCR 1244(1999) and the terms set forth in this Constitutional Framework;*

(b) Promote and fully respect the rule of law, human rights and freedoms, democratic principles and reconciliation; and

(c) Promote and respect the principle of the division of powers between the legislature, the executive and the judiciary.

## **Chapter 3. Human Rights**

[...]

## **Chapter 4. Rights of Communities and Their Members**

### **General Provisions**

4.1 Communities of inhabitants belonging to the same ethnic or religious or linguistic group (Communities) shall have the rights set forth in this Chapter in order to preserve, protect and express their ethnic, cultural, religious, and linguistic identities.

4.2 No person shall be obliged to declare to which Community he belongs, or to declare himself a member of any Community. No disadvantage shall result from an individual's exercise of the right to declare or not declare himself a member of a Community.

4.3 The Provisional Institutions of Self-Government shall be guided in their policy and practice by the need to promote coexistence and support reconciliation between Communities and to create appropriate conditions enabling Communities to preserve, protect and develop their identities. The Institutions also shall promote the preservation of Kosovo's cultural heritage of all Communities without discrimination.

### **Rights of Communities and Their Members**

[...]

### **Protection of Rights of Communities and Their Members**

4.5 The Provisional Institutions of Self-Government shall ensure that all Communities and their members may exercise the rights specified above. The Provisional Institutions also shall ensure fair representation of Communities in employment in public bodies at all levels.

4.6 Based on his direct responsibilities under UNSCR 1244(1999) to protect and promote human rights and to support peace-building activities, the SRSG will retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of Communities and their members.

## **Chapter 5. Responsibilities of the Provisional Institutions of Self-Government**

5.1 The Provisional Institutions of Self-Government shall have responsibilities in the following fields:

(a) Economic and financial policy;

(b) Fiscal and budgetary issues;

(c) Administrative and operational customs activities;

(d) Domestic and foreign trade, industry and investments;

(e) Education, science and technology;

(f) Youth and sport;

(g) Culture;

(h) Health;

(i) Environmental protection;

(j) Labour and social welfare;

(k) Family, gender and minors;

(l) Transport, post, telecommunications and information technologies;

(m) Public administration services;

(n) Agriculture, forestry and rural development;

(o) Statistics;

(p) Spatial planning;

(q) Tourism;

(r) Good governance, human rights and equal opportunity; and

(s) Non-resident affairs.

[...]

## **Chapter 6. Law and Order**

[...]

## **Chapter 7. Kosovo Protection Corps**

[...]

## **Chapter 8. Powers and Responsibilities Reserved to the SRSG**

8.1 The powers and responsibilities of the Provisional Institutions of Self-Government shall not include certain reserved powers and responsibilities, which will remain exclusively in the hands of the SRSG. These reserved powers shall include:

(a) Full authority to ensure that the rights and interests of Communities are fully protected;

(b) Dissolving the assembly and calling for new elections in circumstances where the Provisional Institutions of Self-Government are deemed to act in a manner which is not in conformity with UNSCR 1244(1999), or in the exercise of the SRSG's responsibilities under that Resolution. The SRSG shall exercise this power after consultation with the President of Kosovo. The Assembly may, by a decision supported by two-thirds of its members, request the SRSG to dissolve the Assembly. Such a request shall be communicated to the SRSG by the President of Kosovo;

(c) Final authority to set the financial and policy parameters for, and to approve, the Kosovo

Consolidated Budget, acting on the advice of the Economic and Fiscal Council;

(d) Monetary policy;

(e) Establishing arrangements for the independent external audit of the Kosovo Consolidated Budget;

(f) Exercising control and authority over the UNMIK Customs Service;

(g) Exercising final authority regarding the appointment, removal from office and disciplining of judges and prosecutors;

(h) Deciding upon requests regarding the assignment of international judges and prosecutors, as well as change of venue, in accordance with the relevant UNMIK legislation in force;

(i) Exercising powers and responsibilities of an international nature in the legal field;

(j) Exercising authority over law enforcement institutions and the correctional service, both of which include and are supported by local staff;

(k) Exercising control and authority over the Kosovo Protection Corps;

(l) Exercising control and authority over the management of the administration and financing of civil security and emergency preparedness. Responsibility shall be gradually assumed by the Provisional Institutions of Self-Government;

(m) Concluding agreements with states and international organizations in all matters within the scope of UNSCR 1244 (1999);

(n) Overseeing the fulfilment of commitments in international agreements entered into on behalf of UNMIK;

(o) External relations, including with states and international organisations, as may be necessary for the implementation of his mandate. In exercising his responsibilities for external relations, the SRSG will consult and co-operate with the Provisional Institutions of Self-Government with respect to matters of concern to the institutions;

(p) Control over cross-border/boundary transit of goods (including animals). The Provisional Institutions of Self-Government shall co-operate in this regard;

(q) Authority to administer public, state and socially-owned property in accordance with the relevant UNMIK legislation in force, in cooperation with the Provisional Institutions of Self-Government;

(r) Regulation of public and socially-owned enterprises after having consulted the Economic and Fiscal Council and the Provisional Institutions of Self-Government;

(s) Administrative control and authority over railways, frequency management and civil aviation functions. Certain administrative functions shall be carried out by the Provisional Institutions of Self-Government and the relevant independent regulatory bodies;

(t) Control and authority over the Housing and Property Directorate, including the Housing Claims Commission;

(u) Defining the jurisdiction and competence for the resolution of commercial property disputes;

(v) Preserving the existing boundaries of municipalities;

(w) Responsibility to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles;

(x) Appointing the members of the Economic and Fiscal Council, the Governing Board of the Banking and Payments Authority of Kosovo, the chief executives of the Customs Service and Tax Inspectorate, and the Auditor General; convening and presiding over the Economic and Fiscal Council;

(y) Appointing international experts to the managing boards or commissions of the public broadcaster, the independent media regulatory body and other institutions involved in regulating the mass media, with the proviso that the number of such SRSG nominations will not constitute the majority of any such managing board or commission;

(z) Control and authority over the civil registry database, which shall be maintained in cooperation with the Provisional Institutions of Self-Government.

8.2 The SRSG shall coordinate closely with the International Security Presence (KFOR) in:

(a) Conducting border monitoring duties;

(b) Regulating possession of firearms;

(c) Enforcing public safety and order; and

(d) Exercising functions that may be attributed to the domain of defence, civil emergency and security preparedness.

## **Chapter 9. Provisional Institutions of Self-Government**

[...]

## **Chapter 10. Ombudsperson**

[...]

## **Chapter 11. Independent Bodies and Offices**

[...]

## **Chapter 12. Authority of the SRSG**

The exercise of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244(1999) or this Constitutional Framework.

## **Chapter 13. Authority of KFOR**

Nothing in this Constitutional Framework shall affect the authority of the International Security Presence (KFOR) to fulfil all aspects of its mandate under UNSCR 1244(1999) and the Military Technical Agreement (Kumanovo Agreement).

## **Chapter 14. Final Provisions**

[...]

Signed on this 15th day of May 2001.  
Hans Haekkerup  
Special Representative of the Secretary-General

## **Address to the Security Council by Michael Steiner**

### **Special Representative of the Secretary-General, Wednesday, 24 April 2002 (UNMIK/PR719)**

Mr. President, Members of the Council,

I am pleased to tell you that the UN operation in Kosovo under Resolution 1244 has entered a new phase, allowing us to make new proposals for the way ahead.

In the period from June 1999 UNMIK concentrated on the humanitarian crisis, essential services and on stopping open hostilities, with KFOR's support. Indeed, the Kosovo where my predecessors arrived looked very different from Kosovo today.

#### **I. What Has Been Achieved?**

You have seen the comprehensive report of the Secretary-General. His support has been invaluable in our work.

Government: The Kosovo-wide elections in November were universally recognised as free and fair. The Assembly, the President and the multi-ethnic Government of Kosovo are now in place and working. We are building an inclusive public service. We have set aside more than 20 % of posts to non-majority communities, 18% to Kosovo Serbs.

Police and justice: We have a functioning police and justice system. The crime rate has gone down steadily. There were 500 murders during the second half of 1999, 250 in 2000, and 136 last year. Since January 2002 there have been 16 and, if this trend continues, we can expect less than 100 murders this year.

The economy: It is slowly beginning to function. The 2002 Kosovo Consolidated Budget of 374 million Euros is now over 95 per cent funded from local taxes and revenues. Starting this month, people are paying income taxes. More than 50,000 businesses have been registered. There has been a four-fold increase in the rate of electricity production since 1999.

Public services: The social infrastructure has been rebuilt from scratch. We have more than 1,100 schools with a total of 450,000 pupils. Five regional hospitals have been refurbished and equipped. There are 360 functioning health care facilities throughout Kosovo. 130,000 pensioners will start receiving pensions as of July 2002.

#### **II. Priorities**

Now we have the Provisional Institutions of Self-Government (PISG). What has changed? Until now the mission had a general view of where it was headed, but we didn't see how it would get there. Now we can see more clearly how to structure the path. The road is not endless. We have a vision on how to finish our job.

We need to look both inside and outside. We need to transfer authority within Kosovo to the Provisional Government. We also need to convince the Kosovans to look beyond Kosovo to Belgrade and to the region.

What are our priorities?

Firstly Reliable institutions: We now have Kosovan partners that we can work with: President Rugova, Prime Minister Rexhepi and Assembly President Daci. We need to consolidate the Provisional Institutions, to ensure that they are effective, representative and transparent. We will make a particular effort to ensure their multi-ethnic character at all levels. The Kosovo Serbs have agreed to my proposals for their participation in the Government. They will nominate a Minister for Agriculture, as well as an Inter-Ministerial Coordinator on Returns. This is significant progress. On the local level, the OSCE-run municipal elections this autumn will be key. There are good reasons why especially the Kosovo Serbs want these elections now.

Secondly Boosting the economy: 50% unemployment rate is an untenable situation. At the same time, UNMIK is downsizing. There has already been a substantial drop in donor money. And Kosovo is unable to borrow on the international markets. Getting the economic fundamentals right is therefore even more important. A key element is privatisation. Privatisation will not solve the problem in the short term, but it is the only basis for secure jobs in the long-term. The legislation to create the Kosovo Trust Agency, which will be the vehicle for privatisation, is now with the Provisional Government for comments.

Thirdly Rule of law: Effective police and judiciary are essential. We will gradually transfer policing responsibilities to the multi-ethnic Kosovo Police Force under UNMIK supervision. Let me pay tribute here to the brave UNMIK policemen and women. The Polish Special Police demonstrated their dedication recently in an exemplary manner. We are also enhancing capabilities to effectively combat organised crime, terrorism and corruption. However, I must emphasise that as we begin to make significant arrests against the criminal gangs, we should anticipate a criminal backlash. Commander KFOR General Marcel Valentin and I stand shoulder to shoulder on maintaining order. We must count on your support - particularly when the going gets tough.

Finally Returns: Now that the Kosovo Serbs will be part of the government, we can focus more efficiently on an integrated effort to facilitate return. The years 2002 and 2003 will be decisive. We are committed to create the preconditions for a substantial returns process. Damage assessments in over 80 minority villages and urban areas have been completed. Serb returns to 14 villages and non-Serb minority returns to 7 locations should commence within the next three months. The Kosovo Serbs will have their official representatives working on returns within the Government and in my office. It is time to work on a real breakthrough in returns. For this I must ask for your help. When the returns start, on the basis of our integrated approach, we need to be sure that there will



be money to follow the returnees. Only this way can we achieve sustainable returns.

Here I would like to make a more general point that relates to the previous one. We need to follow a dual track approach. Multi-ethnicity and integration are the two mutually reinforcing elements here. On the one hand, the Kosovo Albanians as the majority community have to practice what their leaders preach. Multi-ethnicity means doing everything they can to encourage the smaller communities to stay in Kosovo and to make returns possible. On the other hand, the smaller communities have to participate in the institutions that we have set up under Resolution 1244. They must integrate and abandon parallel structures. The rule of law must apply everywhere in Kosovo. This is also true for Mitrovica.

There will be no multi-ethnicity without integration. But there will also be no integration without multi-ethnicity.

Integration within Kosovo needs to be complemented by strengthening relations with Belgrade as well as the cooperation within the region. Just as Kosovo is a factor influencing stability within the region, relations with regional neighbours influence stability in Kosovo. I have already made my first trips to Belgrade, Skopje, Tirana and Sarajevo. We will continue to foster regional dialogue both on the bilateral and the multilateral level. Belgrade will be the crucial partner in this process.

### **III. Benchmarks**

I have described the priorities of my Mission. The work of implementing Resolution 1244 is now a joint effort with the Provisional Institutions.

We are transferring our responsibilities to these institutions in the process of building substantial autonomy. This will bring us closer to a stage when it is time to begin the political process designed to determine Kosovo's future status. This will be one of my main responsibilities, as foreseen in paragraph 11(e) of Resolution 1244.

But the time for this has not yet come. Kosovo society and institutions will have to show that they are ready for this process - without prejudging its outcome. We must make clear what is expected from them. Therefore, I am embarking on a benchmarks process. These benchmarks should be achieved before launching a discussion on status, in accordance with Resolution 1244.

The benchmarks are:

1. existence of effective, representative and functioning institutions;
2. enforcement of the rule of law;
3. freedom of movement;
4. respect for the right of all Kosovans to remain and return;
5. development of a sound basis for a market economy;
6. clarity of property title;
7. normalised dialogue with Belgrade; and

8. reduction and transformation of the Kosovo Protection Corps in line with its mandate.

You should have in front of you an illustration of our thinking on benchmarks. These benchmarks articulate our expectations of Kosovo's leaders and the wider public. They mirror the Principles and Priorities in the Coalition Agreement signed on 28 February by political parties forming the Government. Through stimulating public debate, we can also gain broad support for needed reforms.

Attaining these benchmarks is an objective in itself. Kosovo can only advance towards a fair and just society when these minimum preconditions are met. And when the changes in institutions are sustainable even without an international presence.

I offer this to you as an "exit strategy" which is, in reality, an "entry strategy" into the European integration process. The benchmarks complement the preconditions that Kosovo needs to meet to qualify for the Stabilisation and Association process.

I rely on the support of the Security Council for this strategy. But in addition to political support, I will still need your sustained technical and financial support. This is essential in achieving our priorities. Yes, we will have to reduce our engagement. But not in the moment when we should be capitalising on our past work. I am concerned about the anticipated premature reduction in the Kosovo peacekeeping budget. After the marathon that we have run in Kosovo since '99, it would be tragic to falter as we are nearing the finish line.

The next stages of authority transfer will succeed only with your help. And only with your backing will Kosovo be able to develop normalised dialogue and meaningful relations with Belgrade and its neighbours.

The more we invest now, the more stable, sustainable and fair a society we will leave behind. Can we afford not to afford returns? Remember: a stable Kosovo is a key to a stable region. The more support you give us now, the faster we will be able to reduce spending and international personnel.

You have visited Kosovo twice. You have seen it develop. Where there was rubble there are now roads and schools and hospitals. Where there was anarchy, there are now democratically mandated institutions. This has been accomplished through our international presence and the funds that we have committed. I would like to invite you to come again and see what you have achieved.

Mr. President, we have to finish the job we started together. It still takes time. But this is now the decisive phase.

Thank you.

## SRSG Benchmarks

| <b>GENERAL PREREQUISITES:</b> Full compliance with and implementation of Res. 1244 and the Constitutional Framework. Multi-ethnicity, tolerance, security and fairness under normal conditions, without special measures |   |  |   |
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|  | <b>Goals</b>  | <b>Benchmarks</b>  | <b>Action by Local Entities</b>   |
| <b>Functioning Democratic Institutions</b>   | Democratic governance; Revenue collection and efficient delivery of public services; Minority political participation and access; Public services and public employment consolidated; Full implementation of undertakings in gov't coalition agreement (28 Feb); PISG authority throughout Kosovo | Effective, representative and functioning institutions of gov't authority in all Kosovo; Promotion of civil society structures, human rights and full participation by women; Lead role by PISG in policy setting; Transparency in the allocation of resources; Meaningful participation by minority civil servants in gov't; Responsible and professional media | Accountability through focus on delivery of public services; Proportionate minority representation in gov't; PISG to work in both official languages; Align and develop legislation to EU and international standards; Participation by women in gov't;           |
| <b>Rule of Law (Police / Judiciary)</b>  | Organized crime networks disrupted, financial crime checked, and end of extremist violence; Public respect for police and judiciary; Impartiality of judges and KPS, prosecution of all suspected criminals, and fair trial guaranteed to everyone; Sufficient minority representation            | Extremism not tolerated by mainstream; International judges and police enabled to take supportive function; Increased reliability of and prosecution of crime by Kosovo judiciary; Customs services and KPS participate in anti-organised crime strategy; KPS recognised as reliable partner int'lly   | Sustained effort by PISG to promote values of rule of law; Holders of public office to abstain from extremist public statements; PISG budget support to promote higher education and entrance examinations in legal field   |
| <b>Freedom of Movement</b>   | All communities can circulate freely throughout; Kosovo, including city centres, and use their language   | Unrestricted movement by minorities without reliance on military or police   | Policy and sustained action by PISG to promote FoM publicly; Unprompted condemnation by holders of public office of obstruction and violence  |
| <b>Returns and Reintegration</b>   | All Kosovo inhabitants have their right to remain, right to property and right to return respected throughout Kosovo  | Conditions for safe and sustainable returns and reintegration created; All IDPs and refugees to have necessary information for decisions on returns; Returns to urban areas to have started; Adequate allocation of budget resources by PISG for returns and reintegration   | Active advocacy by political and community leaders for returns and reintegration, hosting of go-and-see visits; Key Kosovo-Albanian leaders to have participated in go-and-inform visits where IDPs live; Budget allocation by PISG for returns and reintegration |
| <b>Economy</b>   | Sound institutional and legal basis for a market economy; Balanced budget; Privatisation of socially owned assets   | Minimum legal and regulatory framework to secure investment; Improved tax and revenue collection; Progress on privatisation  | Support to establishment of solid economic framework; Active public support for privatisation by holders of public office   |
| <b>Property Rights</b>   | All property, including residential property, land, enterprises and other socially owned assets, will have a clear and rightful owner   | Significant progress in repossession of properties   | Compliance and support of the Housing and Property Directorate adjudications; PISG and municipal support for evictions; Kosovo budget contribution to HPD   |
| <b>Dialogue with Belgrade</b>  | Normal relations with Belgrade, and eventually with other neighbouring areas  | Practical issues addressed through direct contacts; Problems solved through dialogue and correspondence; Business relations restarted;   | PISG participation in High-Ranking Working Group; Reciprocity in PISG visiting Belgrade and welcoming visitors to Pristina  |
| <b>Kosovo Protection Corps</b>   | Contingent reduced to numbers commensurate with its mandate; Minority participation   | Appropriately reduced contingent; Unqualified compliance with KPC mandate; Relations established with all communities and proportionate minority participation   | Active endorsement by public office holders of reduced KPC numbers and participation of minorities  |